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ANDREW GALLAGHER
P.L. #1.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-186983

DATE: December 8, 1976

MATTER OF: Comten, Inc.

DIGEST:

1. Where there is no showing that RFP is restrictive of competition, fact that particular prospective offeror is dissatisfied with RFP's terms and conditions and does not wish to submit proposal does not establish that RFP is defective.
2. Protester's speculation that equipment being procured under RFP may not satisfactorily meet all of Army's future requirements does not clearly show that Army's determination of minimum needs as reflected in RFP's specifications lacks reasonable basis.
3. Absent any showing that procurement violates applicable law or regulations, objections by protester that agency is not adhering to executive branch policy circulars dealing with ADPE procurement are not for consideration.
4. Confirmation by General Services Administration that Army was delegated necessary authority to procure programmable communications controllers resolves protester's objection concerning sufficiency of delegation.

Comten, Inc., has protested against request for proposals No. 1AAB09-76-R-0013, issued by the United States Army Electronics Command. Comten believes that the RFP, which contemplates the award of a contract for 64 programmable communications controllers and ancillary items, is defective and should either be canceled or amended to cure the defects.

While the protester has submitted a considerable volume of argumentation, its essential objection is that the RFP is "restrictive" because its lack of specificity deprives Comten of the ability to compete for the contract. The protester concedes that the RFP contains specifications which adequately describe communications control functions. Comten's main concern is that the RFP indicates

A-186983

that the equipment procured will be used in the future for other, general application functions which are not described. Considering that a firm fixed-price contract is contemplated, Comten believes that the RFP's vagueness is objectionable essentially because (1) it exposes a prospective contractor to limitless risks, since it may be held contractually liable in the future for failure to meet currently undefined needs, and (2) it exposes the Army to undue risks, because the equipment purchased may not in fact prove capable of satisfactorily and economically meeting all of the undefined future needs. Comten believes that the Army should further study its needs and develop appropriate specifications, purchase a few units for a pilot program study before making a major buy, or, presumably, carry out the present procurement on a cost-reimbursement as opposed to firm fixed-price basis.

In general, we believe that the Army's reports to our Office have satisfactorily responded to the protest, and that the following discussion of the issues is sufficient. The basic premise of Comten's argument that the RFP exposes offerors to undue risks is incorrect. The RFP does not require offerors to guarantee that their equipment will meet all of the Army's future needs; it merely requires that they offer equipment which meets the stated performance requirements and has the capability of being expanded. Nor do we see how the RFP is restrictive of competition; indeed, Comten's contention that the RFP lacks specificity could be taken as an indication that the competitive environment has been broadened, not restricted. In the present case, 39 prospective offerors were reportedly solicited and three offerors submitted technically acceptable proposals.

We believe Comten's position, in effect, is that it is dissatisfied with the RFP's terms and conditions and therefore does not wish to submit a proposal. However, the pertinent inquiry is not whether a particular prospective offeror is able or willing to compete, but whether any showing has been made that the competition as a whole is not being carried out in accordance with applicable law and regulations. See, generally, Schreck Industries, Inc., et al., B-183849, October 9, 1975, 75-2 CPD 221, and decisions cited therein; 49 Comp. Gen. 707 (1970); 33 *id.* 586 (1954); 30 *id.* 368 (1951). Compare Plattsburgh Laundry and Dry Cleaning Corp. et al., 54 Comp. Gen. 29 (1974), 74-2 CPD 27.

D-186983

As for the risk to the Army that the equipment procured on a firm fixed-price basis will not prove satisfactory, the Army points out that its current communications controllers are hard-wired devices which cannot absorb some of the workload of host computers or accommodate additional functional requirements which are expected to develop over the next 5 years. Since the precise scope of the additional requirements is not known, the Army believes that it is neither possible nor desirable to draft specifications around the content of the data which will be processed. Rather than a special developmental effort, the Army states that it is seeking standard, flexible devices and notes that more than 80 models of programmable communications controllers are currently available on the market. It is reported that the three proposals received offered "amazingly similar" equipment. These facts also demonstrate, in the Army's view, that a firm fixed-price contract is appropriate under the standards described in Armed Services Procurement Regulation (ASPR) § 3-404.2(b) (1975 ed.).

Comten's numerous objections to this reasoning essentially amount to speculation that the Army's decision to purchase on this basis, without knowing whether the equipment offered will fulfill all future needs, is reckless and will eventually prove to have been an extremely unwise procurement decision.

There may be risks involved here, as in any procurement, that the agency is purchasing supplies which will be insufficient to meet its actual needs over a period of time, and that additional costs will later be incurred in rectifying this mistake. However, we note that in undertaking a procurement, an agency must attempt to make a determination of its minimum needs. We think that the Army--which must bear the consequences resulting from an unsatisfactory determination of its minimum needs--is in the best position to judge the risks involved. Also, other alternatives to the present procurement are not necessarily free of attendant disadvantages and risks. For instance, for the Army to devote further study to its future needs or conduct a pilot program would leave current needs unmet. It could also be argued that to conduct this procurement on a cost-reimbursement-type contract basis would result in the purchase of equipment which exceeds actual needs.

B-186983

Our Office will object to an agency's determination of its minimum needs only where the determination is clearly shown to have no reasonable basis. See Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232, and decisions cited therein. The record in this case indicates a reasonable basis for the Army's determination, and Comten's differing estimate of the risks involved does not establish the contrary.

Comten further contends that the RFP is contrary to provisions of Federal Management Circular 74-5, August 30, 1974, and Bureau of the Budget Circular No. A-61, August 3, 1963, dealing with the procurement of ADPE. We believe that where, as here, there is no showing that applicable law or regulations have been violated, the question of an agency's compliance with such guidelines--which represent policies established by the executive branch of the Government--is ordinarily not a matter within the protest decision functions of our Office. See PRC Computer Center, Inc., et al., 55 Comp. Gen. 60, 67-68 (1975), 75-2 CPD 35, and decisions cited therein.

Comten has also raised many objections concerning the Delegation of Procurement Authority (DPA) issued by the General Services Administration (GSA) to the Army. The Army has considered and rejected these contentions. Comten's principal allegation is that the DPA referred to procurement of terminals and "associated control devices," whereas the RFP calls for a different type of item, programmable communications controllers.

It is noteworthy that GSA was furnished a copy of the RFP before its issuance, and that GSA then advised the Army that it could release the RFP to prospective offerors. Also, our Office requested the Automated Data and Telecommunications Division, GSA Office of General Counsel, for its opinion on the legal sufficiency of the DPA. The response, by letter dated October 7, 1976, submitted that the Army had been delegated the authority necessary to conduct the present procurement. We think this disposes of the authority issue. Cf. Sperry Rand Corporation (Univac Division) et al., 54 Comp. Gen. 408, 416 (1974), 74-2 CPD 276.

The protest is denied.


Deputy Comptroller General
of the United States